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The Missouri courts¹³ have gone a step further and have held that all corporate creditors, without regard to whether their debts were contracted previous or subsequent to the subscription, have a right to apply unpaid subscriptions to the payment of their debts, unless they choose to waive this right. It is submitted that this should be the rule governing a stockholder's liability for unpaid subscriptions, as it conforms "to the demands of business integrity and honesty and is the logical sequence of the voluntary act of the stockholder flowing from his subscription."¹⁴ The theory of "holding out" or reliance, set forth in the Deceit Theory as the foundation of the stockholder's liability, is not absolutely true, inasmuch as when one becomes a creditor of a corporation there is really no "holding out" by existing stockholders as opposed to subsequent stockholders as far as he is concerned. He relies entirely on the capital stock of the corporation, whether subscribed previous or subsequent to his contract with the corporation.

Frequently, charters of corporations provide that the subscription may be paid in property, real and personal.¹⁵ In such cases, the question often arises as to whether there has been an overvaluation of the property, and the courts have settled upon certain rules in deciding these cases. The Federal courts hold that fraud will not be presumed; but if actually proved, it will vitiate the transaction to the extent of compelling the stockholders to pay the difference between the par value of the stock and the actual value of the property.¹⁶ Gross overvaluation is strong and almost conclusive evidence of fraud, according to the degree of overvaluation. The Minnesota courts are in accord.¹⁷ The New York courts will rescind the contract of subscription on the ground of fraud but will not imply a new contract by which the stockholders shall pay the difference between the par value of the stock and the actual value of the property.¹⁸

N. I. S. G.

PATENTS—INVENTION—DOUBLE USE—The dividing line between a new use involving invention and a mere double use which is not patentable, is one often very difficult to draw, and will depend entirely on the facts of the particular case. An instance of a mere double use is furnished by the recent case of *Weir Frog Co. v.*

¹³ *Chrisman-Sawyer Banking Co. v. Wool Manufacturing Co.*, *supra*, n. 5.

¹⁴ *Chrisman-Sawyer Banking Co. v. Wool Manufacturing Co.*, *supra*, n. 5.

¹⁵ *Coit v. North Carolina Co.*, *supra*, n. 12.

¹⁶ *Taylor v. Cummings*, 127 Fed. 108 (1903); *Taylor v. Walker*, 117 Fed. 737 (1902); *Coit v. North Carolina Co.*, *supra*, n. 12.

¹⁷ *Hastings Co. v. Iron Range Co.*, 65 Minn. 28 (1896); see 4 Thompson on Corporations (2nd Ed.), §§3975-93.

¹⁸ *Southwork v. Morgan*, 205 N. Y. 293 (1912).

Porter.¹ In this case a patent for a semi-automatic derailing switch was held void for lack of invention. The switch was set so as to divert the car from the main track and was held in that position by means of a weight, thereby requiring positive intervention to throw it into its alternative position and causing it to return to the original position when the force was removed. The special utility of the device was in reference to crossings of steam railroads by electric cars. By placing the operating lever at the crossing, or danger point, the conductor of an approaching car, will be compelled to go forward to that point, and hold the switch so that the car can pass and in so doing he gets a view of the other track.

That a patentee is entitled to every use of which his invention is susceptible, is fundamental, whether such use be known or unknown to him.² But the person who has taken his device and by improvements thereon, even though slight, has adapted it to a different industry, may thus draw to himself the quality of inventor.³ For it often requires as much intuitive genius to grasp the idea that a device heretofore used in one art, may be made available in another, as would be necessary to create the device *de novo*. And this is none the less true if, after the thing has been done, it appears to the ordinary mind so simple as to excite wonder that it was not thought of before. As the cases of necessity go entirely upon the particular facts, it is almost impossible to lay down any hard and fast rules for determining the exact point where invention begins. But the underlying principle is the same in all cases, and is well stated in *Potts v. Creager*.⁴ The court said:

"As a result of the authorities it may be said that if the new use be so nearly analogous to the former one, that the applicability of the device to its new use would occur to a person of ordinary mechanical skill, it is only a case of double use; but if the relations between them be remote and especially if the use of the old device produce a new result it *may* at least involve invention."

In a doubtful case the fact that a subject of a patent has gone into general use and has displaced other processes or things, which had previously been employed for analogous uses, may be sufficient to turn the scale in favor of the existence of invention;⁵ so also a long unsatisfied prior demand.

In the principal case, switches and switch points were old.

¹ 206 Fed. Rep. 670 (1913).

² *Tucker v. Spalding*, 13 Wall. 453 (U. S. 1871); *Brown v. Piper*, 91 U. S. 37 (1875); *Roberts v. Ryer*, 91 U. S. 150 (1875); *Penna. Co. v. Locomotive Co.*, 110 U. S. 490 (1883).

³ *Potts v. Creager*, 155 U. S. 597 (1894).

⁴ *Ante* n. 3.

⁵ *Smith v. Dental Vulcanite Co.*, 93 U. S. 495 (1876).

Operating them by rods or cables running to a distant point was old. The use of a spring or weight to hold the switch point normally in one of its two alternative positions, so that it would always be in that position except while temporary force held it in another position, was old. And it was old to operate this particular kind of a switch from a distance. These features or their equivalents were all present in a patent granted to one Martel.⁶ The only difference in Martel's device was that in his patent the switch was used to keep the main track open, while in the Porter patent it was to keep the main track closed. The court has taken the view that "main track," and switch track are mere arbitrary names, and really mechanically identical, for what is a switch to-day may become the main line to-morrow, because of a blockade, or because the superintendent changes his mind. If this be true the Porter patent is clearly only an instance of a double use, namely, keeping the main track closed instead of open. It is suggested, however, that in this case, the words "main track," have a distinct and more particular meaning, in that they refer to the only track which crosses the danger point and leads to the car's destination.

It was further contended that the increased safety derived from requiring the switch to be operated at the danger point was such a new result as to amount to invention. At first glance this might seem to be the case. But upon closer inspection it is clear that there is no actual new result produced; merely a new utilization of an old result. It amounts to no more than an idea for a wider use of an old device without any new mechanical embodiment. And this as pointed out by Judge Grosscup in *Voightman v. Perkinson*⁷ is not patentable. He said:

"Concept alone is not patentable. Concept must be accompanied by mechanical embodiment and as the law now stands mechanical embodiment, to make the invention patentable must itself be emancipated. . . . Now in Voightman's patent every mechanical element is found to have pre-existed. . . . Voightman possibly has pointed out to the world a wider use of the pre-existing art than was before known. But the discovery of an enlarged use is not of itself patentable invention."

T. S. P.

WILLS—THE RULE IN *SHELLEY'S CASE*—In a recent case¹ it was held by the Supreme Court of Pennsylvania that, where the testator devised his real estate to his daughter for life and after her death to descend to and become vested in the children of the

⁶ No. 243,933 (1881).

⁷ 138 Fed. Rep. 86 (1905).

¹ *Lauer v. Hoffman*, 241 Pa. 315 (1913).